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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/666,630	09/20/2000	Kaushal Kurapati	US000240	5682

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EXAMINER

SLOAN, NATHAN A

ART UNIT PAPER NUMBER

2614

DATE MAILED: 01/28/2004

[Handwritten signature]

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/666,630

Applicant(s)

KURAPATI, KAUSHAL

Examiner

Nathan A Sloan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The declaration filed on 10/14/03 under 37 CFR 1.131 has been considered but is ineffective to overcome the Labeeb et al. (2003/0093792) reference.
2. The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Labeeb reference. While conception is the mental part of the inventive act, **it must be capable of proof**, such as by demonstrative evidence or by a complete disclosure to another. **Conception is more than a vague idea of how to solve a problem.** The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897). First, applicant readily admits in the declaration that “dates have been redacted in preparation of the exhibit.” Turning to the actual exhibit, it is clear that applicant has deliberately marked out the date the exhibit was prepared and signed. No other dates can be found on this exhibit that precede the priority date of Labeeb. Intentionally marking out the signed date of the exhibit is not found to be convincing evidence that this was conceived prior to the effective date of Labeeb. Furthermore, there is a clear lack of complete conception for the claimed invention in the exhibit filed. While the submitted exhibit mentions some elements of claims, such as creating sub-sets and using collaborative filtering to recommend programs, many of the claimed elements are not supported in this exhibit. Rather, the exhibit is an idea as to how to solve a problem, lacking any supporting system (as claimed) and enabling details.

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3. The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Labeeb reference to either a constructive reduction to practice or an actual reduction to practice. As noted above, no date is established on the exhibit filed. Additionally, no evidence has been submitted establishing diligence to either a reduction or constructive reduction to practice. This is not found convincing.

4. Because applicant fails to provide any support regarding reduction to practice, it is unclear whether applicant is attempting to establish reduction to practice prior to or after the effective date of the Labeeb reference. Applicant only alleges that "the present invention was conceived ... prior to the earliest effective filing date of the Labeeb reference." No support for a reduction to practice is found; therefore, examiner takes it as a constructive reduction to practice with the filing of the present application on 9/20/2000. This date is not sufficient to overcome Labeeb. Even assuming complete conception and a reduction to practice was established prior to Labeeb's earliest effective date June, 30, 2000, clearly diligence has not been shown during the period prior to 6/30/2000 and the filing on 9/20/2000.

5. For these reasons the declaration under 37 C.F.R. 1.131 is not found convincing. All previous grounds of rejection stand.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4, 9-12, 14-19, 24-27, and 29-32 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Labeeb et al. (2003/0093792).

Labeeb teaches a system and method for monitoring viewing history to determine programs to recommend to viewers.

With respect to claims 1, 3, 16, 18, and 31, the claimed apparatus, method, and article of manufacture “for identifying changes in television viewing preferences of an individual” are met Labeeb with reference to Figure 1 and corresponding methods described in detail below. Labeeb teaches computer executable instructions configured in memory to be executed by a processor for “obtaining a viewer history indicating a set of programs that have been watched by a user” as seen with reference to Figure 15 and paragraph 105 in building a User Selection History 189. A plurality of user choices 187 with respective records combine to form a User Selection History 189. The overall selection history is established into “at least two portions,” a user selection history 189 and a past selection history 216 as seen with reference to Figure 18A. These two selection histories are “profiles” in that they contain viewer record selections for the corresponding history period. The “profiles” are then updated at step 215 of Figure 18A using weighted averages of current and past liking values, claimed “corresponding set of program recommendation scores.” These averages are compared (see paragraphs 110-112) to “identify a change in said viewer preferences” and maintain an accurate viewing preference record.

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Additionally, Labeeb teaches that the liking values may be dynamically changed in order to increase or decrease the learning rate.

With respect to claims 11, 26, and 32, similar limitations are recited as in claims 1, 16, and 31 with the additional limitation of deleting “a portion of said viewing history if said sets of program recommendation scores ... are substantially similar.” This limitation is met by comparing current and past selection histories and updating the records by maintaining a list of the most relevant past selections. If the lists are substantially similar then only the least relevant record is deleted to create room for a new record as taught in paragraphs 109-111.

With respect to claims 2, 12, 17, and 27, the claimed comparing “the top-N (where N is a positive integer) recommended television programs in each set” is met as seen at step 219 of Figure 18B.

With respect to claims 4 and 19, the claimed “presenting a user with a set of recommended programs based on one or both of said sets of programs” is met using the methods above and displaying a list of recommended programs as taught in paragraphs 1786-1792.

With respect to claims 9-10, 14-15, 24-25, and 29-30, the claimed selection of the two histories from “a time span that is less than the entire time period covered by the viewing history” is met by selecting from a user selection history of the past few hours (paragraph 106) and a past selection history of prior time periods. The selected time span is a “similar” time period to a given time period in that they are both time periods with a duration.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5-8, 13, 20-23, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Labeeb (2003/0093792).

5. With respect to claims 5 and 20, the claimed “presenting a user with a union set of recommended programs based said sets of programs” is not taught by Labeeb. Examiner takes Official Notice that the creation of a union of sets of data is notoriously well known in the art. It would have been obvious for one skilled in the art at the time of the invention to modify the system and methods of Labeeb by presenting users with a union of the two history sets in order to provide users with a list of elements that are in either the first or second set.

6. With respect to claims 6 and 21, the claimed “presenting a user with an intersection set of recommended programs based said sets of programs” is not taught by Labeeb. Examiner takes Official Notice that the creation of an intersection of sets of data is notoriously well known in the art. It would have been obvious for one skilled in the art at the time of the invention to modify the system and methods of Labeeb by presenting users with a union of the two history sets in order to provide users with a list of elements that are in both the first and second sets.

With respect to claims 7 and 22, as previously noted, Labeeb teaches creation of a more recent sub-set of viewing history items and display of recommend programs. However, Labeeb does not explicitly teach “displaying recommended programs based on a more recent sub-set of

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said viewing history.” Nevertheless, it would have been obvious for one skilled in the art to display the recent sub-set created by Labeeb in order to provide a user with most recent records which have high relevance as taught in paragraph 109.

With respect to claims 8, 13, 23, and 28, Labeeb does not teach “uniformly randomly sampling sub-sets of television programs from said viewing history” to form the viewing history. Examiner takes Official Notice that uniform random sampling is notoriously well known in the art. It would have been obvious for one skilled in the art at the time of the invention to modify the system of Labeeb by using uniform random sampling in order to ensure that all elements of the television program set have an equal probability of being selected.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan A Sloan whose telephone number is (703) 305-8143. The examiner can normally be reached on Mon-Fri 7:30am - 6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (703)305-4795. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-HELP.

NAS



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